

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION**

CONTINENTAL COMPUTER
COMPANY

Plaintiff

VS.

ROBERT KAGENSKI,
REVENALDO “CHITO” MARTINEZ,
and ROBERT “ROBBIE” MARTINEZ

Defendants

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NO: 3:04CV00235 SWW

ORDER

Defendant Reyinaldo “Chito” Martinez (“Martinez”) has filed a motion to dismiss (docket entry #56), and Defendants have filed a response (docket entry #57). After careful consideration, and for the reasons that follow, the motion will be denied.

Defendant Martinez, who proceeds *pro se*, moves for dismissal based on improper venue. Under Federal Rule of Civil Procedure 12(b)(3), the defense of improper venue must be raised either by a pre-answer motion to dismiss or in a responsive pleading. Martinez answered the complaint on August 2, 2005, and he failed to include an objection to venue in that pleading. Accordingly, Martinez has waived his objection to venue, and his motion to dismiss must be denied. *See* Fed. R. Civ. P. 12(h)(1).

Martinez states that Plaintiff has failed to provide him a computation of damages as required under Fed. R. Civ. P. 26(a)(1)(C). Although the Court finds this allegation insufficient to warrant dismissal, Plaintiff is directed to provide Plaintiff disclosures required under Rule 26.

If Plaintiff fails to do so, Martinez may file a motion to compel.

IT IS SO ORDERED THIS 7TH DAY OF NOVEMBER, 2005.

/s/Susan Webber Wright
UNITED STATES DISTRICT JUDGE